

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

WILLIE E. KNOX

VS.

CIVIL ACTION NO. 3:07CV123-MPM-DAS

MICHAEL J. ASTRUE,
Commissioner of Social Security

ORDER

This matter is before the court on motion of the plaintiff for attorney's fees. After considering the motion, the court finds as follows:

The Equal Access to Justice Act ("EAJA") provides in relevant part:

Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d)(1)(A). Thus, an award of fees is mandated if (1) the claimant is a "prevailing party"; (2) the position of the United States was not "substantially justified"; and (3) there are no special circumstances that make an award unjust. *See Commissioner v. Jean*, 496 U.S. 154, 158 (1990); *Sims v. Apfel*, 238 F.3d 597, 599-600 (5th Cir. 2001).

With the present motion, plaintiff's counsel states he spent 11.05 hours working on the file to prevail. Plaintiff's counsel is asking for \$125.00 per hour totaling a request for \$1,375.00 plus paralegal fees for 3.5 hours at \$65.00 per hour totaling \$227.50. Finally, the plaintiff asks for cost of filing at \$300.00. The defendant has no objection to the rates requested but does

object to the amount of time plaintiff's counsel spent on the case. However, after considering the matter and the rate requested, the Court finds the motion to be well taken.

IT IS, THEREFORE, ORDERED that the defendant shall pay counsel for the plaintiff \$1,602.50 in attorney's fees and plaintiff shall be reimbursed \$350.00 for costs from the Judgment Fund.

SO ORDERED, this the 14th day of November 2008.

/s/ David A. Sanders
UNITED STATES MAGISTRATE JUDGE